

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32**

BCI COCA-COLA BOTTLING
COMPANY OF LOS ANGELES

(Union City, San Jose, Salinas, CA)

Employer

and

Case No. 32-RC-5432

BROTHERHOOD OF TEAMSTERS
AUTO TRUCK DRIVERS, LINE DRIVERS,
CAR HAULERS AND HELPERS, ALAMEDA
COUNTY TEAMSTERS LOCAL 70,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, BCI Coca-Cola Bottling Company of Los Angeles, is engaged in the vending, service, sales and distribution of Coca-Cola products and equipment. Petitioner, the Brotherhood of Teamsters Auto Truck Drivers, Line Drivers, Car Haulers and Helpers, Alameda County Teamsters Local 70, International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent certain employees of the Employer. On May 23, 2006, a hearing officer of the Board held a hearing in this matter.

The only issue in dispute is whether the petitioned-for unit, as amended at hearing, is an appropriate unit. The Union seeks a unit of all full-time and regular part-time equipment field service technicians who serve the Employer's Union City, San Jose, and Salinas service area, and also including the parts expediter in the Employer's San Leandro facility; excluding all other employees, guards, office/clerical employees, and supervisors. The Employer contends,

however, that the petitioned-for unit is not an appropriate unit and that an appropriate unit should be all full-time and regular part-time equipment field service technicians designated to service the Employer's Union City sales center territory; excluding all other employees, employees currently represented by labor organizations, equipment service technicians designated to service the Employer's other sales center territories, plant clerical employees, office/clerical employees, sales personnel, managerial and administrative employees, janitorial employees, guards, and supervisors as defined in the Act.

I have considered the evidence and arguments presented by the parties and, as discussed below, I conclude that a unit consisting of all full-time and regular part-time field service technicians who serve the Union City, San Jose, and Salinas service area, excluding the parts expeditor at San Leandro, and all other employees, office clerical employees, guards, and supervisors as defined in the Act, is an appropriate unit.

I. FACTS

Overview of the Employer's Operation

The Employer is organized into "business units" throughout the western region of the United States, including Northern California, Washington, Oregon, Idaho, Montana and Wyoming. The Northern California business unit includes "sales centers" in Union City, San Jose, Salinas, Benicia, Stockton, Redding, Marysville, Eureka and Ukiah.¹ Each sales center is responsible for the sale and service of Coca Cola product and equipment in their designated geographical area.²

¹ The Employer also has a sales center in Fresno, California. However, the record does not specify whether Fresno is part of the Northern California business unit.

² The Employer's sales centers sell refrigerated "vendors" and glass door coolers containing advertising for the Employer's product. Vendors are coin-operated machines that take money and vend the product. Field service

There are four field service supervisors in the Northern California business unit. Each of these supervisors is responsible for a group of field service technicians who provide maintenance and repair services in designated geographical areas. Each area and the technicians working in that area have been assigned to a particular sales center located in that geographical area. Larry Lapham supervises the technicians supporting the Union City, San Jose and Salinas sales centers; Chuck Bankson supervises the technicians supporting the Marysville, Redding, Eureka and Ukiah sales centers; Rick Brooks supervises the technicians supporting the Fresno sales center; and James Oberg supervises the techs supporting the Benicia and Stockton sales centers. All four field service supervisors report to Bruce Sundby, the western region unit field service manager.

The Sale Center Operations Supervised by Larry Lapham
and the San Leandro Facility

Field service technicians service the Employer's coolers and vendors in their assigned geographical areas. There are six field service technicians assigned to support the Union City sales center, four in San Jose, and two in Salinas. All 12 technicians are supervised directly by Larry Lapham, who does not supervise any other service technicians. The geographical areas covered by the technicians can be extensive. For example, one of the Salinas technicians covers the area from around Gilroy/Morgan Hill down to San Ardo, which is about 60 miles south of King City.

The Employer also has a production facility in San Leandro, California which provides Coca-Cola products to the Northern California sales centers.³ Across the street from the production facility, the Employer has a separate building which houses a sales office, a parts

technicians employed by the Employer service, repair and maintain the coolers and vendors.

³ Union City is about 15 to 19 miles from San Leandro. San Jose is about 35 to 40 miles from San Leandro, and Salinas is between 90 to 100 miles from San Leandro. Salinas and San Jose are about 45 miles apart.

warehouse, and an equipment services operation. Supervisor Lapham has his office in the equipment service department located in the San Leandro facility, where he supervises two dispatchers, three route planners and two route settlement employees.⁴ The San Leandro equipment service department handles shipping, receiving and distribution of equipment to the sales centers in Benicia, Stockton, Salinas, San Jose and Union City.⁵ The three route planners and two route settlement employees handle the transportation of equipment (vendors and coolers) to the sales centers. The two dispatchers in San Leandro dispatch repair work to service technicians for all of Northern California. Lapham also supervises a parts expeditor, Mike Salis, who works in the parts warehouse at the San Leandro facility. The parts expeditor handles the purchasing and delivery of parts used by all the field service technicians in Northern California.

Sales and Service Orders by Customers

Vending and cooler equipment is initially ordered by customers through one of the sales centers, where a sales person completes an order describing the equipment desired by the customer and other specifications. The sales person sends the order to the San Leandro route planners, who review it for accuracy and check inventory for availability. Thereafter, the route planners forward the order to the San Leandro warehouse supervisor, who determines whether the order will be filled by San Leandro or Redding. The equipment preparation is handled by “prep” employees at either San Leandro or Redding. The equipment is then loaded onto cooler trucks and delivered to the appropriate sales center or directly to the customer.

The delivery of equipment to the sales centers (as well as parts ordered by field service technicians) is handled by cooler movers/truck drivers. The deliveries are made either directly to

⁴ The parties stipulated and I find that these seven “administrative” employees supervised by Lapham at the San Leandro facility are office/clerical employees. The parties also stipulated, and I find, that Lapham is a supervisor within the meaning of Section 2(11) of the Act.

⁵ The Employer’s Redding facility, which also has an equipment services department, delivers equipment to all other sales centers in Northern California, as well as parts of Southern Oregon.

customer locations or to the sales centers for later delivery to customers. Parts are also loaded on trucks in San Leandro and delivered to the various sales centers for pickup by field service technicians.

The Employer's Union City sales center is staffed by sales employees and managers, warehouse personnel, delivery drivers, and fleet maintenance employees. The fleet maintenance employees at the Union City sales center only service the Union City delivery trucks and the company vehicles used by the field service technicians dedicated to the Union City sales center. They do not service the vehicles from other sales centers except in emergency situations. The San Jose sales center also has a warehouse and fleet maintenance operation that services its vehicles. The Salinas sales center has a warehouse but not a fleet maintenance operation. The vehicles used by the Salinas drivers and field service technicians are maintained and serviced by a contractor in Salinas.

If customers have problems with equipment, they telephone the Employer's toll free telephone number that connects them to the Employer's central call center in Florida. The center forwards the information electronically to the Regional dispatchers (the San Leandro dispatchers in Northern California) and they process the dispatch to the appropriate service technician. The technicians' assigned service areas are defined by zip codes so that all service calls in their respective zip codes are electronically forwarded to them on their hand-held computers. If the workload is high and the dispatcher needs direction on how to assign the work or move people around to cover the volume of calls, they will contact the appropriate field service supervisor to handle the situation.⁶

⁶ Service calls are never routed to service technicians by the sales staff. In fact, sales personnel do not communicate directly with field technicians even if the customer mentions a problem with equipment while the salesperson is taking their order. In that situation, the sales person will refer the matter to the Employer's toll free telephone number that connects the customer to the Employer's central call center in Florida.

The Field Service Technicians

Field service technicians are required to complete the Employer's training program. They also have certifications specific to the repair of refrigeration equipment. Technicians are assigned company vehicles where they store their service parts and tools, and any other supplies that they use to perform their job. The technicians are required to have certain tools, including basic hand tools (i.e., screw drivers, hammers, and wrenches), cordless drills, refrigeration recovery equipment, and specialized tools to do the refrigeration repairs. The cordless drills and specialty tools are provided by the Employer, whereas the basic hand tools are purchased by the technicians. Technicians are also provided hand trucks to move heavy objects and the handheld computers used to communicate their work assignments. All technicians use essentially the same tools, equipment and vehicles to perform their work. Supervisor Lapham distributes the company-owned tools to the technicians he supervises and then has them sign a confirmation form to keep a record of who was assigned which tool. Lapham, not the sales center, maintains the tool distribution records.⁷

Except for one technician in San Jose who commutes to the San Jose sales center each day, all technicians are home-based, meaning that they drive directly from their home to the customer's location, using their company vehicle. Technicians start their work day at around 7:30 a.m. when they arrive at the customer's facility for the first service call of the day or when they pick up a part at a sales center. They are given the day's assignments the night before so they know where to report to work for their first service call the next day. The dispatch center at the San Leandro facility dispatches the calls to the technicians by transmitting them to their hand-held computers. They enter data into their hand-held computer to record the repairs they

⁷ Technicians wear striped uniforms that say Coca-Cola, but the record does not establish how the uniforms are laundered or whether the technicians take them to a particular location for laundering.

performed and the parts they used. The information entered by technicians can be broken down by geographical area, showing the call activity, including the hours worked in a particular area, or the information can be expanded to include an entire region.⁸

All of the field service technicians perform the same work, with the only distinctions between them being skill level and experience. Supervisor Lapham has veteran technicians assigned to work at all three sale centers (Union City, San Jose and Salinas) under his supervision. Lapham is able to assign technicians to work outside their designated sales center areas to cover for technicians in Lapham's other areas who are absent and to meet increased work volume or special business demands. In this regard, Lapham has assigned Union City technicians to cover for San Jose technicians, and he has assigned San Jose technicians to cover for Salinas technicians. For example, since there are only two Salinas technicians, Lapham sends a San Jose technician to Salinas whenever one of the Salinas technicians is absent. In addition, technicians are called upon when needed to render technical assistance or to provide physical assistance, such as lifting heavy equipment, to technicians in Lapham's other areas. Technicians are also required to work weekends on a rotational basis; therefore, they are occasionally required to work in the other areas for that reason as well.

At the Union City, San Jose and Salinas sales centers, Lapham interviews prospective technicians and, in consultation with Western Region Unit Field Service Manager Sundby, hires them. When any of the technicians supervised by Lapham have an issue, they contact Lapham. Among other things, they call Lapham to request overtime or if they need time off. Lapham keeps documentation of customer complaints in the technicians' personnel files, which he maintains in his San Leandro office. He also conducts quarterly reviews of the technicians' work

⁸ Field service technicians do not visit the sales centers except to complete paperwork, pick up paychecks, get keys or parts, or sometimes to communicate with the sales team on customer-related issues. These are not frequent occurrences. They also take their company vehicles to the fleet maintenance departments for service when needed.

performance. Employees' receive merit pay increases based on the performance rating in their review. The Employer's human resources department, based in Oakland, California, relies on the quarterly reviews in determining the amount of the wage increase the technicians are entitled to receive. The human resources department does not receive input from any other source in determining the amount of the merit increases. Lapham also issues discipline and ultimately has authority to fire technicians, although he consults with Sundby on disciplinary matters.

Lapham maintains a vacation schedule for all 12 technicians assigned to the San Jose, Union City and Salinas sales centers. Lapham allows a maximum of one to two technicians to be on vacation at a given time. Vacation requests are granted based on seniority. Lapham maintains a seniority list for the 12 techs he supervises for this purpose. Technicians submit their vacation requests to Lapham at the end of the year for the following year. Then he puts all of their requests on a calendar and allows the technicians to negotiate any conflicts amongst themselves. If they are unable to work out the conflicting vacation schedule, Lapham makes the final decision. Once the technicians reconcile the vacation schedule amongst themselves, Lapham reviews it for final approval.

Lapham holds safety and/or operation meetings with the service technicians approximately twice each month. He meets with the Union City technicians in San Leandro, and he meets with the Salinas and San Jose technicians in San Jose. Lapham has occasionally met with all 12 technicians at the same location when, for example, a representative from the manufacturer comes to talk to employees about changes in the equipment or new equipment models. On these occasions, the technicians from the other Northern California sales centers have also attended. The Employer also conducts "town hall" or sales meetings, which include

the sales and equipment services employees. Thus, a couple hundred people may attend these meetings.⁹

Service technicians are paid between \$20 and \$26 per hour. The Employer imposes a cap on overtime of two hours per day and 54 hours per week total for the service technicians. Service technicians all have the same company benefits such as pension and healthcare. The Employer has an employee handbook with workplace rules that is given to every employee when they are hired as part of an employee packet.

The Parts Expeditor

The parts expeditor, Mike Salis, orders parts and maintains inventory in the Employer's San Leandro warehouse to support the field technicians throughout the Northern California business unit. Salis works in the parts storage area comprising about 3000 square feet, where he has a desk with a computer terminal. The seven administrative staff members supervised by Lapham at San Leandro are located in a separate office about 100 feet from where Salis works.¹⁰

Technicians order parts from Salis by calling him, using the company Nextel phones. Salis in turn completes a requisition electronically on his computer, as a result of which the ordered part is routed to the technician's inventory. Thus, the part is packaged and then placed in the loading area to be loaded onto a cooler delivery truck for transfer to the appropriate sales center the next day, where it is retrieved by the technician.

Salis purchases and shelves parts, maintains inventory records for parts, receives orders for parts, and packages and ships parts pursuant to the orders. There is a list of vendors that Salis

⁹ The record does not establish whether parts expeditor Salis attends the safety and operation meetings with the technicians. He is included in the Union City meetings to the extent that the subject matter of the meeting pertains to something involving him; but the record did not establish if Salis attended any meetings with technicians.

¹⁰ The parties stipulated that the parts expeditor and the service technicians do not perform the work of the bottling plant or warehouse employees, drivers, office/clerical employees, management, and sales positions or vice versa. Lapham fills in for the parts expeditor when he is absent.

can purchase supplies and parts from. He handles invoicing and billing for parts orders, and manages the budget for the parts operation, which is approximately 1.5 million dollars per year. However, Bruce Sundby, the field service manager, sets a monthly budget that Salis cannot exceed. Salis does his record-keeping on the computer. When parts come in or when someone orders parts, he inputs the information in the computer. Salis spends about 60% of his time performing administrative tasks such as transferring parts, ordering parts, verifying information on invoices.¹¹

Salis has never worked as a technician, nor is he qualified to do so, because he does not have technical training or certification as a technician. Instead, he has received computer and operational training by the Employer. Unlike service technicians, Salis is not required to provide his own tools, and he does not leave his office area other than to pickup parts from suppliers. All deliveries of parts are made by the drivers, not Salis.

Salis reports to Lapham on a day-to-day basis. If Salis needs time off, he gets approval from Lapham. Salis works from 6:30 a.m. to 3 p.m. He is paid from the time he punches in at the San Leandro facility until he punches out. Salis makes about \$24 per hour. He receives the same benefits as the service technicians, except he is not provided a company vehicle to commute to work. Salis usually works a couple of hours of overtime per week, unless there is a special project requiring that he work more hours. If Salis needs to work overtime to complete his work, he calls Lapham to get approval.

If Salis needs additional help, Lapham makes arrangements for a field tech to assist him. Technician Elano Hernaise, who supports the Union City sales center, is “often” assigned to help

¹¹ Starting in about September, the Employer plans to change the current parts process such that much if not all of Salis’ function will be moved to Redding, California. It is anticipated that the parts manager in Redding will take over the responsibility for parts inventory.

Salis at the San Leandro facility. Depending on the volume of work, Hernaise spends as many as three days per week and as little as a half a day a week at the San Leandro parts warehouse assisting Salis. Specifically, in summer months Hernaise spends about 20 percent of his time working in parts with Salis and 80 percent of his time in the field doing technician work. Other field techs have, on occasion, assisted Salis in the parts department, but this is an infrequent occurrence. The record does not reflect the nature of work performed by techs when they “assist” Salis.

Labor Relations and Bargaining History

Bruce Jobson is the human resources manager for the Employer’s western region. He works at the Employer’s offices in Oakland. Jobson oversees general human resources activities that include, but are not limited to, employee and labor relations. He is responsible for the Central California, Northern California and Oregon markets, including Salinas, San Jose, Union City and San Leandro. Four employee relations managers report directly to Jobson, including Kathy Albright, who is responsible for San Jose, Salinas, Union City and San Leandro facilities. She is the human resources point of contact for all of the employees in San Jose, Salinas, and Union City, including the service technicians assigned to those sales centers. There are occasions when Albright may be called upon to assist employee relations managers in other areas if they need help or are unavailable when an issue arises, but the record does not reflect any specific instances of this occurring. Albright works out of the Union City sales center, but the San Leandro facility and the San Jose sales center maintain an office for Albright to use when she goes to those facilities.

The parties stipulated that the employees in the petitioned-for unit have not previously been represented by a union. Teamsters Local 70 currently represents the loaders, cooler

movers, merchandisers and drivers at the Union City sales center. Local 70 also represents drivers, loaders, coolers, movers and inside technicians at the San Leandro facility. Other Teamsters Locals and the Machinist Union currently represent employees involved in production and/or delivery at the San Leandro facility and at the sales centers in San Jose and Salinas.¹² None of these collective bargaining relationships involve a multi-facility bargaining unit.¹³

II. ANALYSIS

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Overnight Transportation Co.*, 331 NLRB 662, 663 (2000). The petitioned-for unit need not be the only appropriate unit, the ultimate unit or the most appropriate unit. The Act requires only that the unit be an appropriate unit so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Bartlett Collins Co.*, 334 NLRB 484 (2001). In defining the appropriate bargaining unit, the key question is whether the employees share a sufficient community of interest. *Verizon Wireless*, 341 NLRB 483, 485 (2004). When examining a petitioned-for multi-facility unit, the Board considers (1) similarity in skills, duties and working conditions, (2) functional integration, (3) employee contact and interchange, (4) centralized control of management and supervision, (5) geographic proximity, and (6) bargaining history. *Id.*

¹² The only unrepresented employees at the San Leandro facility are the parts expeditor, office clerical employees, administrative employees, sales support staff, route employees, and managers.

¹³ However, there are apparently multi-facility units in other business units in the Employer's western region. The Washington business unit has several multi-facility bargaining units covering field service technicians. For example, one of the contracts in Western Washington covers multiple sales centers. The service technicians assigned to the Redding, Ukiah, and Eureka sales centers (in the Northern California business unit) are represented by unions, but the record does not specify whether they are multiple or single facility units.

Applying the foregoing criteria to the instant case, it is evident that the field service technicians dedicated to the Union City, San Jose and Salinas sale centers share a distinct community of interest and constitute an appropriate bargaining unit. Among other things, they have the same skills, duties, and working conditions; they perform the exact same work; use the same tools and company vehicles; and have the same technical training. Reflective of those similarities, they are assigned to work outside their regularly assigned sales center area and assist technicians assigned to the two other centers in question when the need arises.

The appropriateness of the petitioned-for unit is further demonstrated by the similar working conditions of these employees. Thus, a single seniority list covering only the 12 technicians is maintained by their supervisor and used for purposes of assigning their vacation schedule. They also share the same benefits and wages scale, and they are supervised by the same field service supervisor.

A further factor weighing in favor of the petitioned-for unit is the Employer's supervisory structure. Thus, contrary to the Employer's assertion, the petitioned-for unit consisting of the service technicians assigned to the three sales centers in question is not a random grouping of the Employer's organization. Rather, this grouping is based on the Employer's own supervisory and human resources structure. Thus, under the Employer's supervisory structure, Larry Lapham is responsible for supervising the technicians assigned to the sales centers in Union City, San Jose and Salinas but no others, for the service technicians at the Employer's other sale centers are assigned different field service supervisors. Pursuant to this supervisory structure, Union City, San Jose and Salinas technicians have no separate supervision other than Lapham. They do not report to the sales centers, and no one at the sales centers has supervisory authority over them. Rather, the technicians are dispatched from home and receive their daily work orders through

their hand-held computers and Nextel phones. Also, the Employer has designated employee relations manager Kathy Albright as the point of contact between the human resources department and the employees at the San Leandro facility and at the three sales centers, including the technicians affiliated with these three sales centers. Albright is not responsible for any other sales centers, and she maintains offices at two of the three sales centers involved here. Thus, it is evident that the petitioned-for multi-facility unit comports with the Employer's own supervisory and human resources structure.

Given the Employer's supervisory structure, it is evident that Lapham has substantial autonomy in the day-to-day management and supervision of the service technicians in question. In this regard, the technicians go to him with any work related issues that need to be addressed. He determines whether they can work overtime or leave work early, determines their vacation schedule, decides whether to assign technicians to work outside of their regular sales center work areas, keeps the technicians' personnel files in his San Leandro office, and maintains a single seniority list covering the 12 service technicians in the petitioned-for unit. Lapham also interviews and hires the technicians at the three sales centers, albeit in consultation with Sundby. Additionally, he issues discipline and ultimately has authority to fire technicians, although he consults with Sundby on such matters. Moreover, he prepares quarterly reviews of the technicians' work performance, which are relied upon by the human resources department in determining the amount of the wage increases to grant to the service technicians under his supervision.

The record also reflects that there is regular interchange and contact between the Union City, San Jose and Salinas service technicians. For example, they come into contact when requesting technical or physical assistance from one another technician. They also cover for

technicians in other sale center areas supervised by Lapham when a technician assigned to those areas is absent from work and/or the work volume requires assistance to meet the customer demand. The technicians in the petitioned-for unit also come into contact with each other at safety and operational meetings conducted by Lapham.

Although there is no collective-bargaining history for the employees sought by the petition, the Employer's Washington business unit has several multi-facility bargaining units covering field service technicians. Thus, there is precedence for the Employer to have a collective bargaining relationship with a union involving multi-facility units of field service technicians.

Contrary to the Employer's claim, I find that the geographic distances involved here do not make the petitioned-for unit inappropriate. The significance of that distance is diminished by the fact that the employees are dispatched from their homes, only occasionally go into their respective offices, and have interchange with the technicians assigned to the other sales centers involved here. In any event, the other factors discussed above outweigh the significance, if any, of the distances between the sales centers. See *Trane, an Operating Unit of American Standard Companies*, 339 NLRB 866, 868 (2003).

Based on the foregoing and the record as a whole, I conclude that the field service technicians assigned to the Union City, San Jose and Salinas sales centers share a sufficient community of interest and, therefore, constitute an appropriate unit.

The Parts Expediter

Contrary to the Petitioner's contention that the parts expediter and the petitioned-for service technicians constitute a "homogenous" group of employees, the record evidence indicates otherwise. Thus, unlike the technicians who perform their work out in the field, the parts

expediter for the most part performs his duties in an office and he spends most of his time on a computer, doing clerical type work, such as ordering and shipping parts, maintaining an inventory of parts, and verifying information on invoices. In this regard his job functions are more in the nature of the office clerical work performed by the unrepresented clerical and administrative staff at the Employer's San Leandro facility.

The parts expediter has never worked as a technician and he cannot do so, because he does not have technical training or certification of a technician. Moreover, unlike the service technicians, the parts expediter is not required to provide his own tools. He does not leave his office area other than to pickup parts from suppliers. Parts deliveries are made by the drivers.

Those factors relied on by Petitioner in urging that the parts expediter be included in the petitioned-for unit are not, in my view, sufficient to establish the necessary community of interest between him and the service technicians. Thus, to the extent that the parts expediter plays a role in supplying parts to the service technicians, that role is an extremely limited one, with the parts expediter, for the most part, having little personal contact with the service technicians. Moreover, the significance of that contact with the petitioned-for service technicians is further diminished by the fact that he performs the same role with respect to all of the Employer's service technicians in its Northern California business unit. Further, although one service technician in the petitioned-for unit has in the past provided assistance to the parts expediter, that assistance is not sufficient to outweigh the various factors pointing to the lack of a community of interest, particularly given that the parts expediter has never performed any service technician work. Further as noted, the Employer has decided to move the parts expediter function to its Redding sales center.

Accordingly, I conclude that the part expediter does not share an adequate community of interest with the field service technicians to be included in the petitioned-for bargaining unit.

III. CONCLUSIONS AND FINDINGS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, as well as the parties' arguments made at the hearing and the brief filed by the Employer, and in accordance with the discussion above, I conclude and find as follows:¹⁴

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field service technicians dedicated to the Employer's Union City, San Jose, and Salinas sales centers; excluding all other

¹⁴ Although the Employer's post-hearing brief was untimely filed, I have considered it over the Union's objection, no prejudice to the Petitioner having been demonstrated. The Union did not submit a post hearing brief.

employees, parts expeditors, office clerical employees, guards, and supervisors as defined in the Act.

There are approximately 12 employees in the unit found appropriate.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they no longer wish to be represented for purposes of collective bargaining by . The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **June 16, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the

election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **June 23, 2006**. The request may **not** be filed by facsimile. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional

Office's initial correspondence for guidance in doing so. Guidance for electronic filing can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

Dated:

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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